

Notice of Allowability

Application No.

10/021,434

Examiner

Anthony Weier

Applicant(s)

YOKOO ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the transmittal filed 8/6/07.
2. ☒ The allowed claim(s) is/are 55-67.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Replace the Title with the following:

--Heat Sterilized Milk-Added Coffee Beverage and Method of Suppressing
Precipitates in Same—

EXAMINER'S REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance:

The prior art of record does not disclose nor teach the invention as claimed. In particular, Sasagawa et al does not disclose the use of sodium hydroxide with or without potassium hydroxide in a particular amount to facilitate suppressing of precipitates to less than 0.1 ml per 10 ml during heat sterilization. Moreover, Sasagawa et al teaches ill-effects of "saltiness, sliminess, and bad after-taste" in beverages that employ sodium hydroxide for pH adjustment. Sasagawa et al discloses or suggests nothing regarding avoidance of suppressing of precipitates in milk and coffee beverages, and there would be no motivation to modify the sodium hydroxide in the beverage of Sasagawa et al to the amount as claimed in facilitating suppression of precipitate formation and to the degree as claimed. Sasagawa et al discloses the use of potassium salts as a successful alternative to sodium hydroxide in pH adjustment without deteriorating the

Art Unit: 1761

taste, aroma, and quality of the beverage. Although Sasagawa et al further discloses a potassium salt with sodium hydroxide, there is no disclosure or motivation that such combination may be used to suppress precipitation formation to the degree set forth in the instant claims nor is there disclosure or suggestion that said combination would provide such benefit in milk-added coffee beverages.

With respect to Chrysler, although same does disclose avoidance of precipitation when cream powder is combined with hot coffee (nowhere near the temperatures employed in sterilizing, by the way), it should be noted that the instant claims call for the beverage comprising coffee, milk, and at least a particular amount of sodium hydroxide. Chrysler does employ sodium hydroxide during processing, but this involves preparation of a cationic exchange column and not direct inclusion of sodium hydroxide in the milk *with coffee* beverage. This pretreatment of the milk component effects the removal of at least calcium from the milk and would not involve the addition of sodium hydroxide (as a whole) to the milk. It would not have been obvious to one having ordinary skill in the art at the time of the invention to have modified the beverage of Chrysler to include sodium hydroxide directly into the beverage as same is only used to regenerate the cationic exchanger wherein sodium hydroxide itself would not be "dropped" into the milk during the exchanger treatment and, in particular, within the amounts as called for in the instant claims. There would be no motivation for doing same as the purpose of the cationic column in Chrysler is to remove the calcium from the milk and this would not occur if the sodium hydroxide were simply introduced directly into the milk. In addition, Chrysler discloses sterilization of only the milk precursor (before or after cationic

Art Unit: 1761

exchange treatment) but does not disclose or suggest the entire coffee beverage with milk and sodium hydroxide having been heat sterilized (see product claim 61). There is no motivation for sterilizing the coffee beverage after having added the sterilized and cationic exchanger-treated milk to the coffee wherein sodium hydroxide is present and wherein same suppresses the formation of precipitates related to milk and coffee during the sterilization step.

With respect to Ohtake, same adds sodium hydroxide to a concentrated coffee extract for avoiding the formation of precipitates which may occur during storage of same. There is no suggestion or disclosure that said sodium hydroxide is employed in an amount as called for in the instant claims in a beverage with both milk *and* coffee in an amount sufficient to suppress the formation of precipitates due to milk addition to the coffee and sterilization of the beverage. In other words, the precipitates formed in Ohtake are different than those formed in the instant invention due to the presence of milk and step of sterilization in the latter. It would not have been obvious to one having ordinary skill in the art at the time of the invention to have modified the coffee concentrate of Ohtake to be a sterilized coffee beverage containing also milk wherein the amount of milk and coffee solids in conjunction with the specific amount of sodium hydroxide would facilitate prevention of precipitates when said milk is added and the beverage is sterilized.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

Art Unit: 1761

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

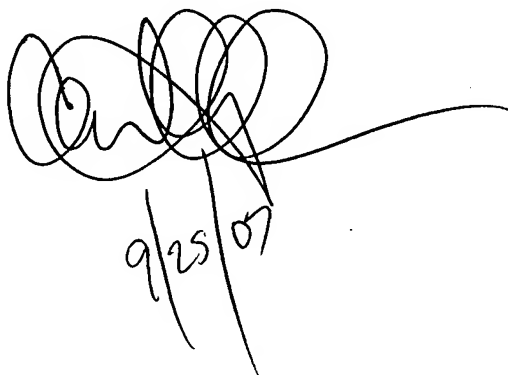
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
September 25, 2007

Anthony Weier
Primary Examiner
Art Unit 1761



9/25/07